IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 3420 of 2007()

AGAINST THE ORDER DATED 22/09/2007 IN ST.571/2005 IN CRMP.4579/2007 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVUR

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REVN. PETITIONER:

RAJESH,S/O.RAMACHANDRAN,
THACHANGATTU HOUSE,NAYARAMBALAM P.O,ERNAKULAM.

BY ADV. SRI.T.R.ASWAS
SRI.ANIL KUMAR SREEDHARAN

RESPONDENTS:

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1. A.K.VARGHESE,AMBALATHINGAL,
CHETTYBHAGOM,VARAPUZHA VILLAGE.

2. STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA.

BY ADV. SRI.V.S.CHANDRASEKHARAN
PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P.No. 3420 of 2007

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Dated this the 26th day of November, 2007

ORDER

Heard both sides.

2. In a prosecution under Section 138 of the Negotiable Instruments Act involving a cheque for a sum of Rs.2.5 lakhs, the complainant's evidence was over on 29.3.06. Thereafter, the accused was questioned under Section 313(1)(b)Cr.P.C on 23.06.07. The case was thereafter posted for defence evidence on 24.7.07 and 19.9.07. On 19.9.07 the accused examined his witnesses. On 19.9.07 itself he filed Crl.M.P.No.4579 of 2007 requesting to recall PW1 stating that certain important questions regarding the transactions were omitted to be put to PW1. As per the impugned order dated 22.9.07, the learned Magistrate dismissed the said application stating that the allegation is vague and not specific.

3. The learned counsel appearing for the 1st respondent-complainant submitted that the court below was fully justified in

dismissing the petition, since the particulars of the transaction have been given both in the complaint as well as in the proof affidavit and this was nothing but an attempt to protract the proceedings further. He also submitted that the petition was vague for not disclosing the material questions which were proposed to be put to PW1.

4. The court below should not have dismissed the petition to recall PW1-complainant. The accused was not expected to disclose the questions which might be put to PW1 during the further cross examination. An opportunity to elicit the materials in support of the defence should not have been shut out in such a manner. If the attempt is part of a dilatory tactics that can be very well be curbed by the Court by not granting a longer adjournment and, if necessary, by putting the accused on terms. Having regard to the circumstances involved, I do not think that the petition filed by the revision petitioner/accused deserved to be dismissed. Hence Crl.M.P.No.4579/2007 filed by the revision petitioner before the courts below will stand allowed and PW1 shall be permitted to be cross examined further. Both sides shall

appear before the court below positively on 11.12.07 without any further notice. PW1 shall be cross-examined on that day itself and the case shall thereafter be disposed of expeditiously.

This Crl.R.P. is allowed as above.

V. RAMKUMAR, JUDGE

sj

/True Copy/

P.A To Judge